

LETTER OF INTENT

Boston Redevelopment Authority
New City Hall
One City Hall Square
Boston, Massachusetts 02201

2058
12/16

Gentlemen:

RE: PARK PLAZA

This letter sets forth the present intentions of the undersigned, Boston Urban Associates ("Urban"), for the proposed development of certain parcels of land in the proposed Redevelopment Area commonly known as Park Plaza.

This proposal covers and includes the three land areas sometimes referred to by the Boston Redevelopment Authority (the "Authority") as Parcels 1, 2 and 3 of the Park Plaza Urban Renewal Area, suitably identified on the plan annexed to this Letter of Intent. Intended to be included as a part of the land area the Authority has from time to time referred to as Parcel One is the Eastern Gas and Fuel Associates property. These land areas are covered by the Park Plaza Urban Renewal Plan, submitted for approval by the Boston City Council (the "Council") and the State Department of Community Affairs (the "State"). The Director of the Authority shall be referred to as the "Director."

PART I.

INTRODUCTIONS AND DEFINITIONS

Urban has been tentatively designated as the Redeveloper in Park Plaza, subject to agreement between Urban and the Authority upon a satisfactory form of Land Disposition Agreement and

formal execution, delivery and performance thereof. The development (the "Project") which Urban proposes consists of the following elements:

- a) building areas intended for use as business offices ("Offices");
- b) building areas intended for use as retail shopping and service facilities ("Retail");
- c) a building area intended to be used as a hotel ("Hotel");
- d) building areas to be used as garages ("Garages");
- e) building areas to be used as apartments ("Apartments"); and finally
- f) pedestrian walkways between building areas.

In addition, open areas (the "Open Areas") in and about Park Plaza, and a part of the Project proper, shall be developed by Urban incident to construction of portions of the Project, all of which shall be improved by amenities such as landscaping, lighting, street furniture, and other items suitable and appropriate to the Project in accordance with the Plan. Urban recognizes that the Director shall determine whether the aforementioned improvements are in conformity with the Plan.

The parcels of land within the Project area will be put to multiple uses. For example, certain of the Apartments will be constructed over retail stores and certain of the Offices will, likewise be constructed over retail stores.

For convenience of reference, land in Park Plaza has been redivided and classified according to the Schedule entitled "Development Schedule for the Various Stages of Park Plaza," annexed hereto, by reference to the timing under which such land is presently intended to be developed. For example, the area presently proposed to be improved with a hotel and parking garage is entitled "Stage A."

he designation of the several parcels, and the division lines among parcels, are diagrammatic only, and are not intended to indicate with precision property boundary lines, since the determination of such boundary lines cannot usefully be made until plans have reached a more definitive stage.

The Authority shall, incident to the development of the Project, be responsible for performing or causing to be performed the site work itemized in the schedule annexed hereto entitled "BRA Site Obligations" which included relocation of public ways and public easements.

PART II

FIRST PHASE ACTIVITIES

Section 2.1. Schematic Design

Promptly after the Authority's acknowledgement that this letter represents the parties' present intentions and approval of the Plan by the Authority and the Council and submission to the State, Urban shall commence the preparation of the Schematic Design for the Project in accordance with Stage I of the standard Boston Redevelopment Authority review process which is known as "Schematic Design" and shall, as soon as the same is available, submit the same for the review and comment of the Director and upon reaching an accord thereon, the approval of the Schematic Design; provided, however, if the State shall not have approved the Plan within ninety (90) days after the submission of the same, Urban shall have the right to suspend further work on the Schematic Design. If Urban shall have so suspended such work, but within one hundred eighty (180) days after the submission of the Plan, the State shall have approved the Plan, Urban shall immediately recommence work on the Schematic Design. At any time after one hundred eighty (180) days following submission of the Plan to the State, State approval not having been given, Urban shall have the right to terminate within 90 days all further obligations under this

agreement and thereupon the Authority shall return to Urban any deposit theretofore made by Urban with the Authority less all out of pocket expenses incurred by the Authority for outside appraisers, title searches and outside counsel retained by mutual agreement of Urban and the Authority.

Urban intends to retain, as the principal consulting architect (the "Architect") for the Project, the firm of Davis, Brody & Associates of New York City. The Architect shall initially be responsible for the preparation of the Schematic Design. Urban also intends, however, to retain the services of other architects to work in association with the Architect for various elements of the Project. No substitution of another principal architect may be made without the consent of the Authority which consent shall not be unreasonably withheld.

Unless Urban has suspended work on the Schematic Design by reason of the State's failure to approve the Plan as provided in the first paragraph of this section 2.1., Urban will submit the Schematic Design to the Authority not later than six (6) months following Council approval except as this date may be adjusted due to a delay in the execution of a Master Land Disposition Agreement. It is expected that Urban and the Authority will execute the Master Land Disposition Agreement within four (4) months following Council approval; but if the time required for execution is delayed beyond four (4) months, then the time which submission of the Schematic Design is due shall be postponed by the amount of time beyond four (4) months required for the execution of a Master Land Disposition Agreement.

Approval of the Plan, for all purposes of this Letter of Intent, shall include, as a part of the same, authorization from the Council for the City to execute a Cooperation Agreement with the Authority regarding the Site Work and authorization for Loan Order to cover the estimated costs of the Site Work. However, the Authority shall not be required to perform the Site Work appropriate for the next scheduled phase until the Authority has received funds or security therefor covering land acquisition and relocation costs for the next scheduled phase of the Project, in amounts (and in the case of security, in form) satisfactory to the Authority, and a commitment on terms and conditions satisfactory to the Authority has been secured for the financing of demolition and construction of the next scheduled phase of the Project.

In connection with the preparation of the Schematic Design, Urban intends to reflect the agreement of the Authority and Urban that the proposed office tower is to be located at the corner of Arlington and Boylston Streets. However, Urban agrees with the Authority to study possible alternatives, and to make available to the Authority such materials as are developed in connection with such study; and Urban shall not change the location of the office building without the approval of the Authority.

Section 2.2. Preparation and Adoption of the Plan

The Authority shall use its best efforts to secure approval of the Plan by the State.

As soon as practicable after formal approval of the Plan, the Director shall initiate the steps requisite to rezoning of the Project area. Such steps shall include, but without limitation, the scheduling of necessary public hearings and preparation of appropriate documents, all to the end that the Authority shall have made all necessary recommendations to appropriate City authority to place the Project area in a so-called planned development area, as that term is defined in the Zoning Ordinance

for the City of Boston, with zoning controls consistent with this Letter of Intent, the Plan, and the Land Disposition Agreement to which reference is hereinafter made. Nothing in this section 2.2 shall obligate the City to effect the required zoning changes.

All such hearings and materials shall have been held and completed in sufficient time in advance of the estimated date when land acquisition for each phase is to take place so that it will be feasible, simultaneously with the Authority's acquisition of land in one phase of the Project area, to cause (by the action of appropriate City authority) acquired land to be rezoned. It is understood that Urban will not be required to forward with land acquisition in any one phase unless the rezoning is accomplished not later than or concurrently with such acquisition (or there are absolute assurances that such rezoning will be accomplished), and the Authority agrees to use its best efforts to secure necessary rezoning action, all as aforesaid.

Since it is contemplated that acquisition of parts of the Project area will occur at different times, necessary zoning action will be phased accordingly, so that the same is taken, with respect to each acquired portion, separately and only after acquisition occurs.

Section 2.3. Subsequent Action by the Authority in Respect of Project Design

Not later than fifteen (15) working days after submission of the Schematic Design, the Director of the Authority shall either approve the Schematic design or notify Urban of the specific respects in which it finds the Schematic Design to be unacceptable, it being understood that, if the Schematic Design is in conformity with the conceptual design heretofore submitted by Urban and in conformity with the objectives of the Plan and the controls stated therein, approval of the Schematic Design will not be withheld.

If the Director of the Authority does not notify Urban within said fifteen-day period after submission of the Schematic Design of specific respects in which the same is unacceptable, the Schematic Design shall be treated as having been approved by the Authority. In respect to any specific matters in the Schematic Design of which the Director of the Authority disapproves, Urban shall, within fifteen (15) working days (or such additional time as may be reasonably required in the circumstances) after Urban receives written notices of such disapproval, resubmit the entire Schematic Design, altered in an effort to remove the basis for disapproval. All resubmissions and subsequent approvals or disapprovals thereof shall be made and given in accordance with the procedure hereinabove provided for the original submission, until the Schematic Design shall be approved or shall be treated as having been approved by the Authority as set forth above. The preceding sentence shall govern the procedure applicable to resubmissions of later stages of the various design documents. Subject to the foregoing, the Standard BRA Design Review procedures, including review by the DAC, shall govern and the procedure applicable to resubmissions of later stages of the various design documents, except that the preliminary working drawings and outline specification stage shall be omitted. In connection with the foregoing, however, the parties contemplate that submission of design material and review of the same will be a continuous process, with the parties working cooperatively in respect of all Project design matters. As work proceeds, Urban shall furnish progress prints of drawings, to assist in the efficient conduct of the review process.

Section 2.4. Development

The Authority acknowledges advice from Urban that Urban intends to develop the Project in phases, as set out in the "Development Schedule for the Various Stages of Park Plaza" annexed hereto, except that the housing located in that part of Parcel 3

intended for low-to-moderate-income housing for the elderly is to proceed only if subsidized financing for the same can be secured. Urban agrees, within 90 days after Stage E has become available for development, to make applications to the Federal Housing Authority (FHA), the Massachusetts Housing Finance Agency (MHFA) and the Boston Housing Authority (BHA) in order to secure the financing and subsidies necessary for housing for the elderly, under the appropriate programs of these agencies. The Authority further agrees that it shall require the Developer to actively pursue said applications and that failure on the part of the Developer to actively pursue said applications shall constitute a default of the Developer's obligations. In the event that Urban fails to obtain such subsidized financing, Urban will cooperate with the Authority in conveying such property rights to the Authority as may be needed to construct 150 such units for such portion of Urban's cost as may be fairly allocable to such rights. In the event of such conveyance the Authority will be required to coordinate its development with Urban's work. The structure(s) shall be designed in such fashion as to enable such conveyance.

Section 2.5. Subsequent Design Materials

Subsequent design materials for the first phase shall be furnished in accordance with the following schedule:

- a) Design development (in which the various elements in Stage A shall be identified and integrated, massing shall be shown, and preliminary functioning elements shall be laid out, together with outline specifications therefor, which shall include designations of materials proposed to be used) shall be submitted to the Authority not later than five (5) months after approval of the Schematic Design; and
- b) Working drawings and specifications, defined to include detail relative to exterior treatment of the various building elements and exterior amenities, specifications for materials, and details relative to methods of construction, site work, streets, elevations and sections, pedestrian and vehicular passage, and public pedestrian levels in interior building spaces, in sufficiently completed form that the same may be utilized for the Construction Contract working drawings and specifications, shall be submitted not later than five (5) months after approval by the Authority of design development drawings.

The Director of the Authority may not unreasonably withhold approval of design materials submitted subsequent to the Schematic Design which are consistent with and elaborations of previously approved materials. Materials for the various phases outlined in the attached "Development Schedule" shall be furnished to the Authority for its approval in like sequence, and approvals or disapprovals of the same, and the time periods within which the same are to be given, shall be governed by the procedure established in Section 2.3. Submission of design development materials for Stage B, as shown on the "Development Schedule," shall be required to be furnished to the Authority not later than eighteen (18) months after the approval by the Authority of Design development materials for Stage A; and design development materials for Stage C, as shown on the Parcel Schedule, shall be required to be submitted to the Authority not later than thirty (30) months after approval by the Authority of Stage A design development materials; design development materials for Stage D as shown on the parcel schedule shall be required to be submitted to the Authority not later than seventy-two (72) months after approval by the Authority of Stage A design development materials; and design development materials for Stage E and F shall be required to be submitted to the Authority not later than eighty-four (84) months after approval by the Authority of Stage A design development materials.

PART III

ECONOMIC FEASIBILITY

Not later than six (6) months after the Authority shall have approved the Schematic Design for Stage A, Urban shall submit to the Director evidence reasonably satisfactory to the Director of the availability and commitment of financing for Stage A. The commitment for financing shall be in a form such that land acquisition for the Stage can commence within two (2) months after its receipt. However, it is understood that,

until possession of the property is assured by the eviction of all occupants, and the City has provided satisfactory assurances as to the timing and completion of utilities' relocation, thereby making more certain the actual construction date, the availability of financing for construction (as distinguished from the commitment relative to financing of land acquisition, which shall be firm before land acquisition commences) will not be in the form typical of final letters of commitment, but such evidence of availability and commitment satisfactory to the Director shall be submitted within six (60) days of such complete possession.

The Authority agrees to use its best efforts to complete property value appraisals of Stage A and Stage B, and such additional areas directly related to Stages A and B, as to which, Urban shall advise the Authority that appraisal work is reasonably needed in order to prepare its financing plans, within two (2) months after final approval of the Plan by the State. In any event, Urban shall not be required to submit evidence of availability of financing until two (2) months after such property value appraisal work is substantially completed. Like evidence of financing plans for Stages B, C, D, E and F shall be furnished by Urban to the Authority no later than four (4) months before proposed commencement of land acquisition of each such phase.

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The Developer acknowledges advice that the Cooperation Agreement between the Authority and the City provides that within one year of the date hereof the City shall have caused appraisals to be made of each of the properties in Disposition Parcels 4 and 5 (Stage II). Such appraisals shall establish the value of each such property as of the date hereof and shall be made at the initial expense of the City; provided that the City shall be reimbursed for such expense by the person or persons selected to develop such parcels within thirty (30) days after execution by him or them of a land disposition agreement. Any land disposition agreement entered into by the Authority for land in the Project Area, shall provide in a fashion satisfactory to the Authority that no land shall be acquired by the Authority or the redeveloper in Disposition Parcels 4 or 5, whether by purchase or eminent domain, at less than the sum at which it will have been appraised on behalf of the City, except that nothing in this section shall be construed to require the City or Authority or developer to make payments in excess of fair market value at the time of the taking unless the owner has made every effort to maintain the highest use of his property. MB3 EIC RTR

Urban agrees to reimburse the Authority for certain of its out-of-pocket costs and expenses in connection with the Project. The parties recognize, however, that there is some difficulty in defining those costs, and accordingly, Urban agrees to pay, on account of all the Authority's costs and administrative expenses (except as hereinafter noted) \$75,000.00 for and with respect to the period ending December 31, 1972, \$50,000.00 for and with respect to the calendar year 1973, and \$25,000.00 (or a portion thereof) for each subsequent calendar year or fraction thereof, until construction on Stage D has commenced, but, in any event, only during periods when substantial services are being rendered by the Authority in connection with Urban's project.

In addition:

- a) For the period which ends with final action by the Council on the Plan, Urban agrees to pay the actual out-of-pocket costs and expenses of the Authority for outside appraisers and outside counsel, but not to exceed \$30,000.00; and, until such approval, Urban's other obligations of reimbursement under this Part III shall not accrue;
- b) After approval of the Plan by the Council, Urban agrees to pay all the Authority's out-of-pocket costs and expenses incurred for outside appraisers, title searches, and outside counsel retained by mutual agreement of Urban and the Authority to handle matters which are not in contention between the Authority and Urban, such as land damage proceedings;
- c) The Authority's out-of-pocket costs and expenses incurred for counsel in carrying out the Authority's obligations under Section 4.3., Paragraphs b) and d); and
- d) The Authority's out-of-pocket costs and expenses incurred to third parties in connection with any Bond Issue to which reference is made in succeeding Sections of this Letter of Intent shall be borne by Urban.

Failure to make payment of the amounts specified in the third paragraph of Part Three within thirty (30) days after the end of each year shall constitute a default by Urban of its obligations to the Authority. Failure to make prompt payment of the other costs and amounts for which Urban is responsible under this Part Three shall also constitute default by Urban of its obligations to the Authority.

PART IV.

LAND DISPOSITION AGREEMENT

Section 4.1. Scheduling of Land Acquisition

In recognition of the fact that separate financing may be appropriate for the various stages of the Project, and because it may be necessary to assure the various financing institutions which will be involved in providing financing therefor of independent security for financing so provided, the Authority shall, on the request of Urban, cause the Project to be divided into areas according to the agreed-upon phases of development of the Project, and shall agree to separate land sales or leases with Urban for each of such separate areas. Such separation may occur after the execution of a "master" Land Disposition

Agreement for the entire Project area, and the execution by Urban of such a master Land Disposition Agreement shall not preclude subsequent separation as may be mutually determined.

In all events, the rights of the Authority with reference to each Stage of the development of the Project, and the obligations of Urban in respect to the same, shall be separate, so that any claim of default with reference to any one such Stage shall not give rise to any claim of default with reference to any other Stage of development of the Project; provided, however, that, should Urban be determined to be in default in any Stage of the development of the Project in accordance with the terms or conditions of applicable agreements between the parties respecting said Stage, Urban shall forfeit the right to commence work on any other Stage of the Project. References hereinafter to the Land Disposition Agreement shall mean the master Land Disposition Agreement or individual Land Disposition Agreements, as the case may be.

Section 4.2. Financing of Acquisition and Other Costs

Urban understands that there is no reasonable likelihood of Governmental assistance or subsidies being available in the near future to assist in the Project, and Urban has advised the Authority that it is considering the feasibility of effecting financing of land acquisition costs, relocation costs, and demolition costs, if any, within the Project area by the use of bond issues (the "Bond Issue") in the name of the Authority, in suitable principal amounts, the proceeds of such bond issue to be limited to the financing of residential and parking facilities and ancillary uses.

The Authority agrees to cooperate (but without out-of-pocket expense to the Authority) with Urban in Urban's consideration of such financing route, and the Authority agrees to

utilize such a financing vehicle to assist Urban in such financing from time to time, provided that Urban furnishes assurances reasonably satisfactory to the Authority that Urban has arranged for the marketing of the same and that the prospective lender or investment banking house responsible for such marketing is satisfied with the legality of the Bond Issue, on the basis of the opinion of counsel to such lender or investment banker, which opinion shall be submitted to the Authority. The opinion of a recognized bond counsel as to the legality of this financing which is acceptable to such prospective lender or investment banking house, upon which opinion the prospective lender or investment banking house commits to rely in proceeding to close the proposed financing, shall constitute assurances reasonably satisfactory to the Authority.

However, the Authority shall not be required to commence the acquisition of land for any Stage until the Authority is provided with evidence reasonably satisfactory to the Authority that the total estimated acquisition, relocation and demolition costs, where appropriate, for said Stage shall be available to the Authority; for example, if a national bank shall provide a commitment to make available, for such purposes, an amount equal to such estimated costs, the same shall be satisfactory assurance.

Section 4.3. Transfer to Urban

The Land Disposition Agreement shall provide for the assumption by Urban of all carrying costs on land acquired by the Authority in accordance with the schedule to which reference is hereinafter made, from and after such acquisition.

In this connection it is contemplated that the Authority shall:

- a) As soon as practicable after the Plan is legally in effect, the Authority shall notify all those persons entitled to notice thereof under the applicable provisions of Chapter 121B of the adoption of the Plan;

- b) Defend any action brought challenging the Plan, or the validity of the adoption thereof, taking all reasonable steps necessary to expedite early and final disposition of any such claims;
- c) Prepare a suitable relocation program for all persons to be displaced after acquisition, and work with all relocatees well in advance of the actual date of acquisition, to the end that possession of the land, free of all occupants, can be delivered to Urban at the earliest possible date after acquisition; and
- d) Prepare all necessary documents and commence all possession proceedings necessary to relocate all occupants of the Project area as soon as possible after land acquisition, with the objective that, not later than six months after the date of acquisition, any parcel of land from time to time acquired shall be free of occupants and available to Urban to proceed with its work subject only to interference by causes beyond the Authority's control.

Carrying costs shall include payments to be made by the Authority to the City of Boston in lieu of taxes, as determined by the City, for property which becomes exempt from taxation by reason of the Authority's ownership.

The Land Disposition Agreement shall also provide for the purchase by Urban from the Authority, or the leasing by Urban from the Authority, of the properties within each phase of the Project area acquired by the Authority, in accordance with a timetable of purchase or lease dates on which Urban and the Authority shall mutually agree (which timetable shall, however, call for land acquisition of each Stage within the Project area as defined in the Development Schedule); Urban will have the option, in any case, whether to purchase or lease such properties.

Any land disposition agreement shall provide, in a fashion satisfactory to the Authority:

- a) That the redeveloper and the Authority shall each waive any so-called third-party beneficiary defense to an action brought by the City to enforce any provision in such agreement;
- b) That the developer will diligently prosecute to completion each successive phase of the project, consistent with Schedule A annexed hereto, subject to causes beyond the redeveloper's reasonable control;
- c) That if the redeveloper shall fail to perform in accordance with any of its obligations under a land disposition agreement, those portions of the project area covered by such land disposition agreement, shall revert to the Authority, subject, however, to the rights of any mortgagee to proceed to perform the obligations of the redeveloper and avoid reversion, or to preserve the mortgage lien as a prior claim on land which may so revert; and
- d) That if the Authority shall issue bonds in order to assist in the financing of any part of the project, neither the City nor the Authority shall have liability to pay the indebtedness evidenced by the bonds, or any of them, under any circumstance.
- e) That the redeveloper shall require as to any parking facility operated within the Project Area that the rates charged to daily commuters who live and work outside the Project Area shall be, on an hourly basis, at least double the rates charged to persons parking there for four hours or less.

The Authority agrees that it shall proceed with acquisition in accordance with a schedule established by the Authority which is consistent with the Development Schedule, but the Authority shall proceed with acquisition of only those properties listed in the Schedule above referred to unless other properties are mutually agreed upon by Urban and the Authority.

Urban recognizes the hardship which the staged development of the Project may cause to property owners and tenants in the Project area. Where the Authority, in its own discretion, shall determine that there is a bona fide hardship in the case of any resident or business to be taken within the project area, the Authority, with the approval of the developer, shall arrange for the early acquisition of said resident's or business' property. The Authority shall, where necessary, require the developer to provide the funds necessary for such early acquisition in advance of such time as such funds would otherwise be required under the provisions of any land disposition agreement or other agreement with said developer.

In connection with land acquisition, reference is made to the fact that certain land may be required to be acquired for the relocation of Charles Street, while other land within the Project area is now owned by the City. As to land in the Project area now owned by the City, the same shall be conveyed to Urban on the basis of appraisals of the land at fair market value, fair market value being defined as determined with reference to zoning, without regard to increments in value which are attributable to combination of such parcels with other parcels, i. e., valuing the land as individual, unassembled pieces, and based on similar appraisals for the valuation of similar City streets.

Said appraisals must be completed within sixty (60) days from the approval of the Plan by the Council.

When the Authority acquires land necessary for the location of new Charles Street, certain parts of land so to be acquired are to be sold (or leased, as aforesaid) to Urban. The purchase price of such portions shall be the pro rata share of the land costs and costs of demolition of existing improvements, except there shall be deducted from the price otherwise determined that part of relocation expenses paid for by Urban but allocable to land areas to be retained by the Authority for the location of new Charles Street. Consistent therewith, Urban agrees to pay all relocation costs for persons displaced from land acquired for the purpose of obtaining the new location of Charles Street.

For the areas Urban elects to purchase, the Land Disposition Agreement shall provide that the purchase price shall be equal to the principal amount of the Bond Issue, allocable thereto, together with accrued interest thereon. In addition, Urban shall be obligated to make payments to the City of Boston in lieu of taxes attributable to such properties within said area agreed upon between the Authority and Urban, for properties owned by the Authority which are currently exempt from taxation. Payment for purchased property shall be made by conveyance thereof subject to the obligations imposed on the properties transferred by the terms of the Bond Issue.

For the areas which Urban elects to lease from the Authority, the Authority shall enter into a completely net ground lease (the "Lease") with Urban, for a maximum term of two years, containing, but not limited to, the following terms and provisions:

- a) Annual rent shall include an amount equal to interest and sinking fund payments due on the Bond Issue;
- b) Urban shall be entirely responsible for the payment of real estate taxes assessed against the property and for payments in lieu of taxes on account of property which may be exempt from taxation by reason of the Authority's ownership, in amounts

determined by the City, equal to the amount which would have been payable, in the aggregate, as real estate taxes if the property were not exempt from taxation and fee title thereto was held by Urban.

c) Any income earned by the Authority from properties covered by the Lease shall, after deducting reasonable expenses fairly allocable thereto (but not any amounts determined by reference to the Authority's staff expenses, except property management fees) be treated as a credit to rent under the Lease. Such income is herein referred to as the "Credits;"

d) The term of the Lease shall expire on the date when the Bond Issue matures and all the unpaid principal thereof is due and payable. At that time, the Authority shall sell and Urban shall purchase the fee in the land covered by the Lease for a purchase price equal to the then outstanding unpaid principal and interest on the Bond Issue, after taking account of amounts available for payment against principal from the sinking fund and Credits, if any, not theretofore applied against rent; and

e) At any time during the term of the Lease, Urban shall have the right to acquire the fee to the land covered by the lease at a purchase price equal to an amount determined in accordance with subparagraph d) immediately above with appropriate adjustments such as those referenced in subparagraphs a), b), and c).

Where Urban purchases portions of the Project area, and leases other portions, separate bond issues, or separate series of the same bond issue, will be utilized for the financing of each Project area, such separate issues or series being allocated in their entirety to a purchased portion and a leased portion of the Project area.

In any case where payments are to be made in lieu of taxes, with reference to property exempt from taxation, the amount thereof, per year, shall in no event exceed the amount which would have been payable as real estate taxes if the property were not

exempt from taxation.

However, where payments to be made in lieu of taxes are not fixed by statute, Urban shall participate in all negotiations the Authority may have with the City relative to the amount to be paid in lieu of taxes, and settlement of such amounts shall be made only with Urban's approval. Nothing in this Section shall bind the City to accept an amount therefor which may have been agreed upon by Urban and the Authority.

Section 4.4. Private Acquisition; Cooperation in Eminent Domain Proceedings

Although it is contemplated that properties within the Project area will be acquired by the exercise of the Authority's power to take by eminent domain, the Authority understands that Urban will negotiate with individual owners of individual parcels before any eminent domain action is instituted and, in some instances, after a taking. In the case of any settlement of an eminent domain proceeding which Urban negotiates after a taking by eminent domain, the Authority agrees to join in any reasonable settlement thereof, provided the Authority receives suitable assurances that the cost thereof shall be financed by Urban or will be satisfactorily funded by the Bond Issue.

In the case of individual parcels within the project area acquired by Urban by private negotiations, the Authority agrees, on Urban's request, to take the same by eminent domain, notwithstanding Urban's ownership of the same, and to make an eminent domain award on account thereof equal to Urban's cost of acquisition thereof, provided said cost is the result of a reasonable settlement, subject, however, to assurances provided to the Authority as to the financing of such acquisition, as in the case of a settlement of an eminent domain proceeding Urban negotiates after a taking from a third party. Urban agrees, however, that, in the case of such individual parcels acquired by Urban by private negotiations, Urban shall remain responsible for the payments to non-owner

individual occupants in the properties so acquired for the same relocation payments for which Urban would have been responsible had the property been taken by eminent domain.

Incident to the exercise of the Authority's power to take by eminent domain, the Authority shall consult with Urban relative to the method by which all appraisals for acquisition are to be made, and the appraisers selected to perform the appraisals in preparation for the exercise of such power, and no offer shall be made by the Authority to the owner of any property within the Project area as to the terms and conditions of any voluntary sale or settlement of any eminent domain proceeding without the prior approval of Urban. The Authority shall consult with Urban in the selection of appraisers and counsel representing the Authority in the eminent domain proceedings.

Section 4.5. Court Award

Urban recognizes that, in the event of an eminent domain taking, the Authority may, due to a court award, be required to pay a larger amount for land acquisition than was paid by the Authority in the initial damage award. To provide for this contingency, the Land Disposition Agreement or the Lease, as the case may be, shall provide that, in the event the Authority is required to pay such larger amount, Urban shall pay to the Authority, upon demand, an amount which shall be sufficient to reimburse the Authority for such additional amount, together with interest thereon, and Urban shall provide the Authority with adequate security to satisfy its obligations hereunder. If the Authority makes a payment in accordance with the preceding portion of this paragraph, and Urban does not forthwith reimburse the Authority therefor, then Urban will pay interest at the legal rate on any such delinquency.

The amount of security from time to time that the Authority may require relative to performance of Urban's obligations shall not exceed, in the aggregate, thirty per cent (30%) of the initial awards made in eminent domain proceedings on properties, the awards for which are at the time in dispute, and the form of such security may be an unconditional irrevocable Letter of Credit in the form and from a bank acceptable to the Authority. The amount of said security shall in no way limit the obligation of Urban to pay the total and final award of land acquisition costs.

PART V.

BOND ISSUE

Section 5.1. Development Bonds

Urban has advised the Authority that it is considering the feasibility of effecting financing of improvements to land within the Project area, as well as land acquisition, by the use of bond issues (the "Development Bond Issue") in the name of the Authority, in suitable principal amounts, the proceeds of such bond issue to be limited to the financing of residential and parking facilities and ancillary uses.

As in the case of the Bond Issue, which it is intended may be utilized to finance acquisition of properties, any such Development Bond Issues shall contain provisions to the effect that the holders of the Bonds would look only to the properties, the acquisition or development of which is to be financed by such Development Bond Issues, and not to the general credit of the Authority, or the City of Boston which shall have no obligation to pay the indebtedness evidenced thereby.

The Authority agrees to cooperate (but without out-of-pocket expense to the Authority) with Urban in Urban's consideration of such financing route and the Authority agrees to utilize such a financing vehicle to assist Urban in its financing of the Project from time

to time provided that Urban furnishes assurances reasonably satisfactory to the Authority that Urban has arranged for the marketing of the same and that the prospective lender or investment banking house responsible for such marketing is satisfied with the legality of the Bond Issue, on the basis of the opinion of counsel to such lender or investment banker, which opinion shall be submitted to the Authority. The opinion of a recognized bond counsel as to the legality of this financing which is acceptable to such prospective lender or investment banking house, upon which opinion the prospective lender or investment banking house commits to rely in proceeding to close the proposed financing, shall constitute assurances reasonably satisfactory to the Authority.

Section 5.2. Industrial Development Bonds

Under Section 103 of the Internal Revenue Code, certain types of bond issues (the "Industrial Development Bonds") are exempt from Federal income tax.

The Authority agrees to cooperate (but without expense to the Authority) with Urban in qualifying any Bond Issue or any Development Bond Issue as an Industrial Development Bond under the Internal Revenue Code, as the same may now or hereafter be in force. Copies of rulings secured from the Internal Revenue Service will be made available to the Authority.

PART VI.

MISCELLANEOUS

Section 6.1. Preference in Leasing of Space

Urban agrees, to the extent practicable, to give preference to former occupants of space in the Project area in the leasing of space in the Project. First preference shall be given to former occupants theretofore displaced incident to acquisition of properties by

the Authority and second preference shall be given to then present occupants of properties remaining in the Project area not yet acquired by the Authority or in buildings in areas where demolition has not yet taken place.

The obligation of Urban to give preference shall not be construed as imposing upon Urban any legal obligation to accept as a tenant of space in the Project a person, firm or corporation which it considers, in good faith, to be an unacceptable tenant by reason of credit, reputation or other relevant consideration, such as the use to which such tenant proposes to put space which might otherwise be made available to such tenant. Likewise, such obligation to give preference shall not be treated as imposing a legal obligation upon Urban to accept a tenant, the credit and reputation of which, or the amount which such tenant is prepared to pay for space which might otherwise be made available to it, is of lesser quality or lesser amount than another proposed user which wishes to make use of such space.

Section 6.2. Relocation

Urban recognizes that it is the Authority's policy to make payments in accordance with the highest Federal payments available to residents and businesses being relocated in urban renewal projects which are in effect at the time of relocation, but in no case will such payments be less than the Federal relocation payments to residents and businesses in effect on the date the plan is approved by the City Council.

The redeveloper will provide such funds as are required to defray the costs established by Federal relocation rules prevailing at the time the Authority first sought bids for the Project, plus 50% of any sums in addition thereto resulting from payment of benefits under Federal regulations in effect when such relocation occur. The City will provide the other 50% of such additional sums.

Unless otherwise required by State law or regulations, the procedures and timetables for business and family relocation required by the Federal government shall govern.

The Land Disposition Agreement or the Lease, as the case may be, shall provide that Urban shall employ the Authority to relocate all tenants within the Project area and shall advance and provide operating capital to the Authority for business and residential relocation costs which are to be reimbursable in accordance with the standards referred to in the preceding paragraph.

Section 6.3. Real Estate Taxes

Urban has advised the Authority that Urban intends to review its proposals for the Project with the Tax Assessor of the City of Boston, for the purpose of reaching an understanding relative to the basis upon which real estate taxes will be assessed to various parts of the Project. Urban has advised the Authority that its ability to secure financing for the Project, and the entire economic feasibility of the Project, is contingent upon Urban's ability to reach a satisfactory understanding with the City which will permit development to proceed on a financially feasible basis.

Section 6.4. Assignment

Urban intends to cause to be formed a Joint Venture in which the two individuals signing this Letter below on behalf of Urban will be the managing Joint Venturers, and Urban intends that the Land Disposition Agreement will be entered into by such Joint Venture, as the developer in lieu of Urban. If Urban's intentions in this respect are carried out, and a Joint Venture is formed for purposes of acting as the Developer, the Authority agrees to recognize such Joint Venture as Urban's successor, provided that it is satisfied that the managing Joint Venturers are, in fact, said individuals, viz., Zuckerman and Linde.

Prior to acquisition, Urban, however, agrees to notify the Authority of the identity of any person which proposes to acquire a ten per cent (10%) or greater beneficial interest in the Joint Venture. The Authority, at any time within fifteen (15) days after receiving notice of the identity of such person, shall have the right to notify Urban that it objects to the admission of such person in the Joint Venture if the Authority shall, in such notice,

specify reasonable grounds for such objection. If such notice shall be given by the Authority, such person shall not be admitted to such an interest in the Joint Venture without the consent of the Authority, but the Authority agrees to consult further with Urban, if Urban continues to desire to admit such person to the Joint Venture, and not unreasonably to withhold consent to such admission.

Section 6.5. Urban Development Corporation

Urban has advised the Authority that, if an urban development corporation should be created in The Commonwealth of Massachusetts, the assistance of such an agency in the development of Park Plaza might well be of great importance to its development and ultimate success, and, accordingly, the Authority agrees that it will cooperate with Urban in connection with any assistance sought from any such corporation incident to the Project. If actual funds are made available by an urban development corporation for the development of Park Plaza by Urban and urban development corporation fund resources are limited, the Authority may require an opinion of said urban development corporation that such funds shall not unreasonably affect the availability of urban development corporation funds for other suitable projects within the City of Boston at that time.

Section 6.6. Changes in the Plan

The Authority hereby agrees with Urban that any change in the Plan, other than changes affecting exclusively Parcels 4 and 5, not consented to by Urban will constitute a change which would "materially affect the parcels in the Project area which have been sold or leased." However, Urban agrees to consent to changes which are not material and which do not adversely affect its interest.

Section 6.7. Additional Payment to City

In addition to all other amounts to be paid by Urban on account of acquisition of Parcels 1, 2 and 3 of the Project area, Urban further agrees to pay to the City the sum of \$3,000,000.00, payable in annual installments not to exceed \$150,000.00 each, commencing on the first to occur of:

- a) The expiration of five (5) years following substantial completion of the development of Parcels 1, 2 and 3; or
- b) The expiration of thirteen (13) years after the commencement of construction in the Project area.

The obligation on the part of Urban to make such payment shall be an obligation as to which recourse may be had only against the Project, and shall be subject to the availability of funds to make such payment after all operating costs, debt service or other payments to outside lenders and to investors, other than Urban, have been made, but before any return to Urban on its investment, it being understood that a more detailed subordination agreement will be developed in the Land Disposition Agreement.

Upon acceptance by the Authority of this Letter of Intent, and approval of the Plan by the Council, Urban shall deposit with the Authority the sum of \$100,000.00 cash or by obligations of such value guaranteed by the United States Government, or obligations of States of the United States satisfactory to the Authority. The cash deposit already made by Urban with the Authority, in the amount of \$25,000.00, shall be credited against such obligation. Any interest accruing on deposits shall inure to the benefit of Urban and periodically be paid by the Authority to Urban.

The Master Land Disposition Agreement to be executed by the Authority and the redevelopers of Parcels 1, 2 and 3 of the Project Area shall contain a clause obligating such redevelopers to deposit with the Authority either in the form of cash or a Letter of Credit in a form, on conditions, and from a bank acceptable to the Director of the Authority the sum of \$500,000 in total at the time the Land Disposition Agreement is executed. It will further obligate the redeveloper after completion of Stages A and B further to increase such deposit by an additional \$500,000 by means of an unconditional Letter of Credit, in form and from a bank acceptable to the Authority. Such additional \$500,000 shall, however, be reduced from time to time by:

- a) All legal and appraisal costs for which the Redeveloper is responsible, and
- b) All other payments to be made by the Redeveloper to the Boston Redevelopment Authority to reimburse the Authority for out-of-pocket costs and expenses in connection with the Project.

The deposit shall be reduced to \$500,000 in total upon the start of construction of Stage E.

It is understood and agreed that Urban's \$100,000.00 deposit under the terms and conditions of this Letter of Intent will be applied towards the initial \$500,000.00 deposit under the terms and conditions of the aforementioned Master Disposition Agreement.

If the Authority shall determine that Urban has failed to proceed in good faith with its intentions or with the conveyance contained herein:

- a) The Authority shall hold the deposit made by Urban;
- b) The Authority shall rescind Urban's designation as developer as to those properties on which construction has not yet commenced;
- c) The Authority shall proceed to secure a replacement of the developer for those parcels on which construction has not commenced; and
- d) Those parcels on which construction has not at the time commenced shall revert to the Authority, subject, however, to the rights of mortgagees as aforesaid.

The Authority's determination in the immediately preceding paragraph shall be subject to review by a court of competent jurisdiction which shall ascertain the actual damages suffered and the rights of the parties, subject, however, to the limitation on Urban's liability specified in the paragraph immediately following this paragraph.

In the event of a determination that Urban is in default hereunder, the Authority shall retain that part of the deposit at the time made by Urban as fixed liquidated and agreed damages sustained by the Authority because the parties are unable to ascertain the exact amount of damages, costs, disbursements and expenses which the Authority would sustain by reason of abandonment of the Project by Urban, and such rights shall be the Authority's sole remedy.

The Authority shall not have the right, however, to retain such deposit as liquidated damages if the Plan is not duly and formally adopted or if an agreement

in the form of a Land Disposition Agreement to carry out this Project, mutually acceptable to both Urban and the Authority, is not consummated, or if, Urban having acted in good faith, it is unable to proceed due to causes beyond Urban's reasonable control, such as, but without limitation, governmental regulation of construction or credit, which would impede Urban's development, national emergency or natural catastrophe; subject, however, to payment by Urban to the Authority of the expenses referenced in Part III hereof. In any case where the Authority is not entitled to retain such deposit under the terms of this Letter, and where Urban's further obligations shall have ended, the Authority shall return such deposit to Urban after deducting therefrom any unpaid expenses which are the responsibility of Urban.

If the foregoing accurately states your understanding of the plans upon which the Authority and Urban mutually agreed to proceed, would you please so indicate by accepting this Letter by appropriate acknowledgment thereof.

Very truly yours,

BOSTON URBAN ASSOCIATES DECEMBER 17, 1971

By Mortimer B. Zuckerman
Mortimer B. Zuckerman

By Edward H. Linde
Edward H. Linde

ACCEPTED AND ACKNOWLEDGED:
BOSTON REDEVELOPMENT AUTHORITY

By Robert T. Kenney
Robert T. Kenney, Director

DEVELOPMENT SCHEDULE FOR THE VARIOUS STAGES OF PARK PLAZA

Stage A - Hotel and Parking Garage (Parcel 2)

Substantial construction shall commence not later than four (4) months after land is cleared and streets and utilities are available to permit construction to commence, it being understood that financing will be available six (6) months after approval of the Schematic Design, and that land acquisition can be started. It is hoped that land will be available by late spring or early summer of 1972.

MBG
EIL
RTK

(18 mos.) Stage B - First Residential Tower and First Portion of Retail Arcade (Parcel 1, between Charles Street and Hadassah Way).

Construction is to commence approximately six (6) months following commencement of construction on Stage A but in no event later than eighteen (18) months following commencement of construction on Stage A. Stage B and Stage A are interchangeable as to time.

(30 mos.) Stage C - Retail Arcade and Low Rise Office Space (Parcel 1, between Hadassah Way and Arlington Street).

Construction is to commence approximately eighteen (18) months following commencement of construction on Stage A but in no event later than thirty (30) months following commencement of construction on Stage A.

(72 mos.) Stage D - Residential Tower (western position of Parcel 3).

Construction is to commence approximately thirty-six (36) months following commencement of construction on Stage A but in no event later than seventy-two (72) months following commencement of construction on Stage A.

(84 mos.) Stage E - Third Residential Tower (eastern portion of Parcel 3, to include low-to-moderate-income housing for the elderly if subsidized financing for the same can be secured).

Construction is to commence approximately forty-eight (48) months following commencement of construction on Stage A but in no event later than eighty-four (84) months following commencement of construction on Stage A.

.. Stage F - Office Tower (Parcel 1, corner of Arlington and Boylston Streets).

Construction is to commence no later than eighty-four (84) months following commencement of construction on Stage A.

BOSTON REDEVELOPMENT AUTHORITY SITE OBLIGATIONS

| <u>Description of Work</u> | <u>Estimated Cost</u> |
|---|-----------------------|
| Rebuilding of Arlington Street (between Boylston and Stuart) | \$ 245,650 |
| Rebuilding southerly half of Boylston Street) (between Arlington and New Charles) |) - 593,900 |
| Resurfacing of Boylston Street (between New Charles and Tremont) |) |
| Rebuilding of Church Street (between Columbus and Stuart) | 24,750 |
| Rebuilding of Columbus Avenue (between Stuart and Church) | 285,000 |
| Construction of New Charles Street (between Boylston and Stuart) | 4,678,150 |
| Rebuilding of Providence Street (between Arlington and Providence Street Extension) | 175,100 |
| Construction of New Providence Street Extension (between Providence and Stuart) | 139,900 |
| Rebuilding of Stuart Street (between Arlington and Tremont) | 599,250 |
| Resurfacing of Tremont Street (between Boylston and Stuart) | 58,300 |

Included in each instance are: street lighting; high-service water system; low-service water system; high pressure fire system; surface drainage system; sanitary sewer system; traffic control system; street, traffic, and directional signs; and police signal and fire alarm systems.